Supreme Court, U.S.
FILED

No. 93-____ 93 1820 MAY 12 1994

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JULIE SEJPAL, VINOD SEJPAL and ERICA LYNN SEJPAL, a minor, by Julie Sejpal, her guardian,

Petitioners,

—v.—

CORSON, MITCHELL, TOMHAVE & MCKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. MCKINLEY, DONALD R. MCKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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95 pp

TABLE OF CONTENTS

PAGE

Sejpal v. Corson, No. A-778 (U.S. March 21, 1994) (Souter, J., Circuit Justice) (Order Granting Extension) 1a

Sejpal v. Corson, No. 0209 (Pa. Dec. 28, 1993) (Order Denying Petition for Allowance of Appeal) 2a

Sejpal v. Corson, No. 581 (Pa. Super. Ct. Jan. 26, 1993) (Memorandum Affirming Dismissal of Plaintiffs' Claims) 3a

Sejpal v. Corson, No. 581 (Pa. Super. Ct. Jan. 26, 1993) (Judgment) 10a

Sejpal v. Corson, No. 581 (Pa. Super. Ct. April 2, 1993) (Order Denying Application for Reargument or Reconsideration) 11a

Sejpal v. Corson, No. 1991-2288-A (Pa. Ct. Comm. Pl. Mar. 4, 1992) (Opinion and Order Sustaining in Part and Denying in Part Defendants' Preliminary Objections) 12a

Complaint 16a

Defendants Corson, Mitchell, Tomhave & McKinley, M.D.S., Inc.'s Preliminary Objections to Plaintiffs' Complaint 45a

Defendant Conemaugh Valley Memorial Hospital's Preliminary Objections to Plaintiffs' Complaint 58a

Plaintiffs' Answer to Preliminary Objections of Defendants Corson, Mitchell, Tomhave & McKinley, M.D.S., Inc. 60a

Plaintiffs' Answer to Preliminary Objections of Defendant Conemaugh Valley Memorial Hospital 63a

Plaintiffs' Application for Reargument 66a

MSAFP Telephone Report 83a

Deposition of Julie Sejpal (Excerpts) 85a

SUPREME COURT OF THE UNITED STATES

No.

A-778

Julie Sejpal, et al.,

Petitioners

v.

Mitchell, Corson, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including

May 12, 1994.

/s/ David Souter
Associate Justice of the
Supreme Court of the United States

Dated this 21st
day of March, 1994.

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Charles W. Johns, Esquire
Prothonotary
Irma T. Garder
Deputy Prothonotary

801 City-County Building
Pittsburgh, PA.
15219-2463
(412) 565-2816

December 28, 1993

Kenneth W. Behrend, Esquire
BEHREND AND ERNSBERGER
2400 Grant Building
Pittsburgh, PA 15219

In Re: Julie Sejpal and Vinod Sejpal and Erica Lynn Sejpal, a minor, by Julie Sejpal, her guardian, Petitioners v. Corson, Mitchell, Tomhave & McKinley, M.D.S., Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley, Donald R. McKinley and Conemaugh Valley Memorial Hospital
No. 0209 W. D. Allocatur Docket 1993

Dear Mr. Behrend:

The Court has entered the following Order on your Petition for Allowance of Appeal filed in the above-captioned matter:

"PER CURIAM:

AND NOW, this 28th day of December, 1993, the Petition for Allowance of Appeal is denied.

Mr. Justice Larsen did not participate in the decision of this case."

Very truly yours,
/s/ Irma T. Gardner
DEPUTY PROTHONOTARY

ITG: llb
cc: David Donaldson, Esq.
Frank J. Stanek, Esquire
Frank J. Hartye, Esquire
Thomas Halloran, Esquire
Hon. F. Joseph Leahey

JULIE SEJPAL, VINOD SEJPAL and ERICA LYNN SEJPAL, a minor, by Julie Sejpal, her guardian, Appellants	) IN THE SUPERIOR) COURT OF) PENNSYLVANIA
v.	
CORSON, MITCHELL, TOMHAVE & MCKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. MCKINLEY, DONALD R. MCKINLEY AND CONEMAUGH VALLEY MEMORIAL HOSPITAL,	) No. 00581) Pittsburgh, 1992

Appeal from the Order Entered March 4, 1992, in the Court of Common Pleas of Cambria County, Civil Division, at No. 1991-2288-A.

BEFORE: ROWLEY, P.J., JOHNSON, and HESTER, JJ.

MEMORANDUM: Date: January 26, 1993

Vinod and Julie Sejpal, together with their minor daughter, Erica Lynn Sejpal, appeal from the order entered in the Court of Common Pleas of Cambria County on March 4, 1992, which sustained certain preliminary objections in the nature of a demurrer. For the reasons set forth below, we affirm.

The procedural history of this case may be summarized as follows. On August 27, 1991, nearly two years after Erica's birth, appellants instituted this action by filing a praecipe for a writ of summons against Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley, Donald R. McKinley, Conemaugh Valley Hospital, and Corson, Mitchell, Tomhave, and McKinley, M.D.S., Inc. Several months later, following service of the writ, appellants filed a complaint asserting counts for fraud,

medical malpractice, lack of informed consent, wrongful birth, wrongful life, and violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* Those counts related to the care provided to Mrs. Sejpal during the course of her pregnancy and its impact upon both Erica's birth and Mrs. Sejpal's subsequent tubal ligation.

In support of their causes of action, appellants alleged that the individuals and the professional corporation both concealed information and made a number of express and implied misrepresentations by failing to reveal that Mrs. Sejpal's age put her in a high risk category for giving birth to an impaired child, that a test conducted on Mrs. Sejpal further demonstrated that the risk was involved in her pregnancy, that amniocentesis was available for purposes of evaluating the situation, and that Mr. and Mrs. Sejpal had a right to terminate the pregnancy. In addition, appellants, who claimed that amniocenteses would have demonstrated that Erica suffered from a defect, asserted that the individuals that Erica suffered from a defect, asserted that the individuals and the corporation failed to inform Mr. and Mrs. Sejpal that it was standard medical practice under the circumstances to conduct an amniocentesis, to advise them of their rights regarding the termination of the pregnancy, and to provide them with counseling concerning the possibility of having additional children. Appellants also averred that Erica, who was born by Caesarean section, was afflicted with Down's Syndrome, and that Mrs. Sejpal underwent an elective tubal ligation on the day of the birth. Finally, they alleged that Mrs. Sejpal would not have given birth to Erica or undergone the subsequent sterilization absent the improper conduct and that Conemaugh Valley Hospital, by neglecting to provide proper supervision, bears some responsibility for their losses.

Shortly after appellants filed their complaint, appellees filed preliminary objections in the nature of a demurrer to the counts relating to the claims for wrongful birth, wrongful life, and violations of the Unfair Trade Practices and Consumer Protection Law.[1] On March 4, 1992, the trial court entered an order, which

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[1] We note that the preliminary objections filed on behalf of Hamptom

(continued...)

dismissed those counts. This timely appeal followed.

Preliminarily, we note that we have an obligation to consider the propriety of each appeal and that such consideration may be undertaken sua sponte. *Gatten v. Merzi*, 397 Pa.Super. 148, 579 A.2d 974 (1990) (*per curiam*). Absent a specific statutory provision to the contrary, any appeal determined to be interlocutory must be quashed. *Id.* Accordingly, we sua sponte consider the propriety of the present appeal, which arises out of the dismissal of some but not all of the counts contained in a multi-count complaint.

> "As a general rule, an order dismissing some but not all counts of a multi-count complaint is interlocutory and not appealable." *Praisner v. Stockner*, [313 Pa.Super. 332, 459 A.2d 1255 (1983)]. However, the *Praisner* court enunciated an exception to this rule when it held that if the causes of action are separate and distinct, dismissal of some but not all claims is immediately appealable. *Id.* at 341, 459 A.2d at 1260.
>
> Subsequent decisions have clarified this exception through application. Most recently, an *en banc* panel of this court examined whether an action for professional negligence for failing to administer amniocenteses was separate and distinct from one alleging professional and negligence for failure to obtain informed consent. In *Jenkins v. Hospital of Medical College of Pennsylvania*, 401 Pa.Super. 604, 585 A.2d 1091 (1991), the court stated that in determining whether a plaintiff has been "put out of court" when a particular claim is dismissed, "we look to see whether the claims that have been

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[1] (...continued)
Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley, Donald R. McKinley, and the corporation bearing their names also raised challenges to the specificity of certain allegations and requested the court to enter an order striking all claims for damages in excess of $20,000.

> dismissed and those that remain 'request different relief for different harms.'" *Id.* at 611-12, 585 A.2d at 1094 (quoting *Daywalt v. Montgomery Hospital*, 393 Pa.Super 118, 122, 573 A.2d 1116, 1118 (1990)).

Bash v. Bell Telephone Co., 411 Pa.Super. 347, 351-51 [sic], 601 A.2d 825, 827 (1992).

In the present case, appellants filed a complaint containing claims of fraud, medical malpractice, lack of informed consent, wrongful birth, wrongful life, and violations of the Unfair Trade Practices and Consumer Protection Law. However, in accordance with preliminary objections filed by appellees, the trial court entered an order dismissing the latter three classes of claims. Since the claims relating to the Unfair Trade Practices and Consumer Protection Law obviously were based upon statutory authority, we must consider them separate and distinct from claims which were not affected by the trial court's order. *See Gatten v. Merzi, supra.* We also consider the wrongful life count separate and distinct as it is the only count set forth in the complaint requesting relief on behalf of Erica.

Unlike the unfair trade practice and wrongful life counts, the final class of allegations, which concern claims for wrongful birth, require more than a cursory analysis. Our examination of the complaint reveals that the wrongful birth claims are premised upon allegations of fraud, medical malpractice, and violations of the Unfair Trade Practices and Consumer Protection Law. Despite this fact, it is clear that the claims seek damages arising from the birth of Erica. This harm is distinct from those set forth in the claims that survived the trial court's decision, which related to both the procedure by which the birth was accomplished and the tubal ligation. Accordingly, as allegations relating to three contested classes of claims are separate and distinct from those which remain, we conclude that the instant appeal is properly before us.

We now address the merits. The standard utilized for reviewing the propriety of decisions sustaining preliminary objections in the nature of a demurrer is well-established. In *Gatten v. Merzi, supra*, 397 Pa.Super. at 151, 579 A.2d at 975,

we discussed that standard and, quoting *Gordon v. Lancaster Osteopathic Hospital Assn.*, 340 Pa.Super. 253, 489 A.2d 1364 (1985), stated:

> On appeal from an order sustaining preliminary objections in the nature of demurrers, this Court is concerned only with determining the legal sufficiency of appellant's complaint. *Schoot v. Westinghouse Electric Corporation*, 436 Pa. 279, 259 A.2d 443 (1969). We must confine our analysis to the complaint and decide whether sufficient facts have been pleaded which would permit recovery of ultimately proven. *Id.*; *D'Antonia v. Hampton Grinding Wheel*, 225 Pa.Super. 120, 310 A.2d 307 (1973).

With these principles in mind, we must examine the contested classes of claims.

It is clear that appellants' wrongful birth and wrongful life claims would not have supported a recovery because they specifically are precluded by 42 Pa.C.S. § 8305(a) and (b).[2]

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[2] In pertinent part, 42 Pa.C.S. § 8305 (footnotes omitted) states:

> **(a) Wrongful birth.** -- There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should not have been born. Nothing contained in this subsection shall be construed to prohibit any cause of action or award of damages for the wrongful death of a woman, or on account of physical injury suffered by a woman or a child, as a result of an attempted abortion. Nothing contained in this subsection shall be construed to provide a defense against any proceeding charging a health care practitioner with intentional misrepresentation under the act of October 5, 1978 (P.L. 1109, No. 261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, or any other act regulating the professional practices of health care practitioners.
>
> **(b) Wrongful life.** -- There shall be no cause of action on

(continued...)

Recognizing this fact, appellants contend that the statutory preclusions place an impermissible burden on a woman's right to an abortion and thus, are unconstitutional under *Planned Parenthood v. Casey*, 505 U.S. ___, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). We find this issue waived since the Commonwealth was not a party to the action and our examination of the record reveals no indication that appellants provided the Attorney General of Pennsylvania with notice of their constitutional challenge in accordance with Pa.R.A.P. 521(a).[3] *See Kepple v. Fairman Drilling Co.*, ___ Pa. ___, ___ A.2d ___ (Nos. 54, 55, and 86 W.D. Appeal Dockets, 1991, filed 11/10/92) (failure to comply with requirements of Pa. R.A.P. 521(a) results in waiver); *see also Butler v. Rolling Hill Hospital*, 382 Pa.Super. 330, 555 A.2d 205 (1989).

We now turn to appellants' claims regarding violations of the Unfair Trade Practices and Consumer Protection Law. Our reading of appellants' complaint reveals that they have premised those claims on the misrepresentation and concealment of facts by the various individual appellees, who both operated the professional corporation bearing their names and engaged in the practice of obstetrics. In addition, we note that appellants alleged

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[2] (...continued)

> behalf of any person based on a claim that, but for an act or omission of the defendant, the person would not have been conceived or, once conceived, would or should have been aborted.

[3] That rule provides:

> **(a) Notice.** It shall be the duty of a party who draws in question the constitutionality of any statute in any manner in an appellate court to which the Commonwealth or any officer thereof, acting in his official capacity, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of Pennsylvania of the existence of the question; together with a copy of the pleadings or other portion of the record raising the issue, and to file proof of service of such notice.

that these misrepresentations and concealments occurred during the course of Julie Sejpal's prenatal care.

It is clear that the Unfair Trade Practices and Consumer Protection Law does not permit a person to recover damages from a physician for explicit statements made to him during the course of treatment. *See Gatten v. Merzi, supra* (holding that allegedly inaccurate statements made by a physician regarding both a patient's course of treatment and the probable results of that treatment will not support a cause of action under the Unfair Trade Practices and Consumer Protection Law). In light of this fact, it is logical for us to find that the statutory scheme also would not permit recovery for the concealment of facts in connection with the doctor-patient relationship, which is the equivalent of an implied statement in that regard. Thus, since appellants' claims were premised upon explicit and implied statements made during the course of Julie Sejpal's prenatal care, they support no cause of action arising under the Unfair Trade Practices and Consumer Protection Law. Accordingly, the trial court properly dismissed those claims.

Order affirmed.

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

Julie Sejpal, Vinod Sejpal and Erica Lynn Sejpal, a minor, by Julie Sejpal, her guardian, Appellants	:	
vs.	:	No. 581 Pittsburgh, 1992
Corson Mitchell, et al	:	

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Cambria County be, and the same is hereby affirmed.

BY THE COURT:

/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY

DATED: January 26, 1993

SUPERIOR COURT OF PENNSYLVANIA
PITTSBURGH DISTRICT

Julie Sejpal, Vinod Sejpal and Erica Lynn Sejpal, a minor, by Julie Sejpal, her guardian, Appellants	:	
vs.	:	No. 581 Pittsburgh, 1992
Corson Mitchell, et al	:	

ORDER OF COURT

The court hereby denies the application filed February 9, 1993 requesting reargument or reconsideration of the decision dated January 26, 1993.

PER CURIAM"

Very truly yours,

/s/ Eleanor R. Valecko
DEPUTY PROTHONOTARY

DATED: April 2, 1993

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
CIVIL DIVISION

JULIE SEJPAL, VINOD SEJPAL and ERICA LYNN SEJPAL, a minor, by Julie Sejpal, her guardian,	:	No. 1991-2288
	:	ARGUMENT COURT
	:	JANUARY, 1992
Plaintiffs	:	NO. 6353
vs.	:	
CORSON, MITCHELL, TOMHAVE & McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL,	:	
Defendants	:	

OPINION AND ORDER

LEAHEY, J. - Defendants seek, by way of Preliminary Objections in the nature of Demurrer or Motion to Strike, dismissal of Plaintiffs' causes of action for "wrongful birth", "wrongful life" and breach of the Unfair Trade Practices and Consumer Protection Act. For the reasons which follow, we grant these objections and dismiss those counts of the Complaint. Defendants also raise several other objections which we grant in part and deny in part.

In Counts III, IX and XV of the Complaint, Julie and Vinod Sejpal, in their capacity as parents, set forth a purported cause of action for injuries and damages allegedly sustained by them as a result of the "wrongful birth" of their child, Erica Lynn Sejpal.

Specifically, Count III of the Complaint alleges "fraudulent misrepresentation (deceit) resulting in wrongful birth." Count IX of the Complaint seeks relief based upon "violation of Unfair Trade Practices and Consumer Protection Act . . . resulting in wrongful birth." Count XV of the Complaint alleges "medical malpractice resulting in wrongful birth."

No cause of action exists in Pennsylvania for wrongful birth and/or wrongful life. 42 Pa. C.S. 8305(a)(b). Contrary to Plaintiffs' contention, we find that these statutes do not violate the due process clause and other provisions of the United States Constitution. Therefore, we have no alternative but to dismiss all allegations of the Complaint pertaining to the "wrongful birth" and "wrongful life" purported causes of action.

We find, further, that Pennsylvania's Unfair Trade Practices and Protection Law (73 P.S. 201 *et seq.*) does not apply to the transactions between plaintiffs and defendants. Accordingly, all allegations in the Complaint pertaining to alleged causes of action based upon this Act will be dismissed.

The Complaint seeks damages in excess of $20,000 which is in violation of Pa. R.C.P. 1021(b). Therefore, those portions of the Complaint wherein damages are claimed in excess of $20,000 must be stricken for lack of conformity to law and rules of court.

Defendants have also, in their Preliminary Objections, moved to strike and/or compel a more specific complaint concerning various paragraphs of the Complaint. We will deny those portions of the Preliminary Objections, but will limit Plaintiffs to those theories of negligence specifically pled in the Complaint and we shall prohibit Plaintiffs from amplifying or expanding their theories of negligence against the Defendants.

ACCORDINGLY, WE ENTER THE FOLLOWING:

IN THE COURT OF COMMON PLEAS OF CAMBRIA
COUNTY, PENNSYLVANIA
CIVIL DIVISION

JULIE SEJPAL, VINOD SEJPAL and ERICA LYNN SEJPAL, a minor, by Julie Sejpal, her guardian,	:	No. 1991-2288
	:	ARGUMENT COURT
	:	JANUARY, 1992
Plaintiffs	:	NO. 6353
vs.	:	
CORSON, MITCHELL, TOMHAVE & McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL,	:	
Defendants	:	

ORDER

NOW, this 4th day of March, 1992, Defendants' Preliminary Objections to Plaintiffs' Complaint are SUSTAINED in part and DENIED in part. It is ORDERED and DIRECTED as follows:

1. All allegations of the Complaint pertaining to "wrongful birth" and damages purportedly suffered as a result of said cause of action are hereby STRICKEN from the Complaint.

2. All allegations pertaining to "wrongful life" and the damages purportedly suffered as a result of said cause of action are hereby STRICKEN from the Complaint.

3. All allegations pertaining to the alleged causes of action based upon the Unfair Trade Practices and Consumer Protection

Act and the damages purportedly suffered as a result of violations of the Act are hereby STRICKEN from the Complaint.

4. Those portions of the Complaint claiming damages in excess of $20,000 as contained in the "wherefore" clauses of the Complaint are hereby STRICKEN from the Complaint.

5. Defendants' Motion to Strike and/or Compel a More Specific Complaint concerning various paragraphs of the Complaint is DENIED. However, it is DIRECTED that Plaintiffs be limited to the theories of negligence specifically pled in the Complaint, and Plaintiffs shall not be, without further order of court, permitted at any time in these proceedings to amplify and/or expand their theories of negligence against the Defendants.

BY THE COURT:

/s/
F. Joseph Leahey, J.

IN THE COURT OF COMMON PLEAS OF
CAMBRIA COUNTY, PENNSYLVANIA

JULIE SEJPAL and VINOD SEJPAL, and ERICA LYNN SEJPAL, a minor, by JULIE SEJPAL, Her guardian, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
v.	:	
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL, Defendants.	:	NO. 1991 - 2288 - A

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a Judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE

(Continued on Next Page)

THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Johnstown Legal Aid
THE JOHNSTOWN COUNTY BAR ASSOCIATION
7 Allegheny
Legal Aid Incorporated
500 Swank Building
616 Main Street
Johnstown, PA 15901

814-536-8917

JURY TRIAL DEMANDED

COMPLAINT IN A CIVIL ACTION

The plaintiffs, Julie Sejpal and Vinod Sejpal and Erica Lynn Sejpal, a minor, by Julie Sejpal, her guardian, by their counsel, Joseph E. Hudak and Behrend & Ernsberger, file this complaint in a civil action, and in support thereof respectfully submit as follows:

1. Plaintiffs Julie Sejpal and Vinod Sejpal are adult individuals residing in Cambria County, Pennsylvania.

2. Plaintiff Erica Lynn Sejpal is a minor individual residing in Cambria County, Pennsylvania. She was born on August 30, 1989. She is represented in the action by plaintiff Julie Sejpal, her mother, as her guardian. The address of plaintiff Julie Sejpal, as guardian for the minor Erica Lynn Sejpal, is c/o Behrend & Ernsberger, 2400 Grant Building, Pittsburgh, Pennsylvania 15219.

3. Defendant Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc. is a Pennsylvania corporation doing business in Cambria County, Pennsylvania.

4. Defendants Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley are adult individuals residing in and/or doing business in Cambria

County, Pennsylvania.

5. Defendant Conemaugh Valley Memorial Hospital is a Pennsylvania corporation doing business in Cambria County, Pennsylvania.

6. All of the acts and omissions about which plaintiffs complain took place in Cambria County, Pennsylvania.

7. In about January 1989, Plaintiff Julie Sejpal was pregnant.

8. In about January 1989, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley were engaged in a family practice of medicine specializing in obstetrics and gynecology.

9. In about January 1989, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S. Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley represented to the world in general and to plaintiffs Julie Sejpal and Vinod Sejpal that they were engaged in a family practice of medicine specializing in obstetrics and gynecology.

10. In reliance on these and past representations, plaintiffs Julie Sejpal and Vinod Sejpal placed themselves and their unborn baby, plaintiff Erica Lynn Sejpal, in the care of
defendants Corson, Mitchell, Tomhave and McKinley, M.D. S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley.

11. In about January 1989, plaintiff Julie Sejpal was thirty six (36) years old. Based on her age alone, she was in a category of women exhibiting a high risk of giving birth to a children with birth defects.

12. Further, in about March 1989, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley caused blood to be drawn from plaintiff Julie Sejpal for a maternal serum alpha-fetalprotein (MSAFP) assay. The results of this test provided further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and showed that risk to be dramatically higher than normal, even for a woman her age. Indeed, the lab report even set forth the specific warning that defendants Corson, Mitchell,

Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should advise plaintiff Julie Sejpal of the option of amniocentesis.

13. Under these circumstances, it was standard medical practice to perform an amniocentesis. Amniocentesis would have revealed to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome.

14. These circumstances presented plaintiffs Julie Sejpal and Vinod Sejpal had the option of terminating the pregnancy.

15. Under these circumstances, it was standard medical practice to recommend and/or provide family counseling.

16. Under these circumstances, it was standard medical practice to recommend and/or provide counseling regarding the possibility of additional children.

17. Under these circumstances, it was standard medical practice to advise persons in the position of plaintiffs of the option of terminating the pregnancy.

18. Nonetheless, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, refused to and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal:

a. that based on her age alone, plaintiff Julie Sejpal was in a category of women exhibiting a high risk of giving birth to children with birth defects;

b. that the results of the maternal serum alpha-fetalprotein (MSAFP) assay provided further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and showed that risk to be dramatically higher than normal, even for a woman her age;

c. that the lab report on the maternal serum alpha-fetalprotein (MSAFP) assay indeed even set forth the specific warning that Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should advise plaintiff Julie Sejpal of the option of amniocentesis;

d. that amniocentesis would have revealed to plaintiffs

Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

e. that plaintiffs Julie Sejpal and Vinod Sejpal had the option of terminating the pregnancy;

f. that is was standard medical practice under the circumstances to perform an amniocentesis;

g. that is was standard medical practice under the circumstances to provide family counseling;

h. that is was standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

i. that it was standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy; and thus made express or implied false representation:

j. that based upon her age plaintiff Julie Sejpal was not in a category of women exhibiting a high risk of giving birth to a children with birth defects;

k. that the result of the maternal serum alpha-fetalprotein (MSAFP) assay did not provide further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and show that risk to be dramatically higher than normal, even for a woman her age;

l. that the lab report on the maternal serum alpha-fetalprotein (MSAFP) assay did not set forth the specific warning that defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should not advise plaintiff Julie Sejpal of the option of amniocentesis;

m. that amniocentesis would not reveal to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

n. that plaintiffs Julie Sejpal and Vinod Sejpal did not have the option of terminating the pregnancy;

o. that it was not standard medical practice under the circumstances to perform an amniocentesis;

p. that it was not standard medical practice under the circumstances to provide family counseling;

q. that it was not standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

r. that it was not standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy.

19. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, refused and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal the matters described in the preceding paragraphs 18 (a) through 18 (i), inclusive, either:

a. intentionally; and/or
b. recklessly; and/or
c. as a result of gross negligence; and/or
d. negligently.

20. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley made express or implied false representations as described in the preceding paragraphs 18 (j) through 18 (r), inclusive either:

a. intentionally; and/or
b. recklessly; and/or
c. as a result of gross negligence; and/or
d. negligently.

21. In the alternative, defendants Corson, Mitchell, Tomhave, and McKinley, M.D.S. Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R.McKinley, refused and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal:

a. that based on her age alone, plaintiff Julie Sejpal was in a category of women exhibiting a high risk of giving birth to children with birth defects;

b. that the results of the materal serum alpha-fetal protein (MSAFP) assay provided further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and showed that risk to be dramatically higher than normal, even for a woman her age;

c. that the lab report on the maternal serum alpha-

fetalprotein (MSAFP) assay indeed even set forth the specific warning that defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should advise plaintiff Julie Sejpal of the option of amniocentesis;

d. that amniocentesis would have revealed to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

e. that plaintiffs Julie Sejpal and Vinod Sejpal had the option of terminating the pregnancy;

f. that it was standard medical practice under the circumstances to perform an amniocentesis;

g. that it was standard medical practice under the circumstances to provide family counseling;

h.that it was standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

i. that it was standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy.

22. Defendants Corson, Mitchell, Tomhave, and McKinley, M.D.S, Inc., Hampton Corson, donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, refused and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal the matters described in the preceding paragraphs 20 (a) through 20 (i), inclusive, either:

a. intentionally; and/or

b. recklessly; and/or

c. as a result of gross negligence; and/or

d. negligently.

23. In the alternative, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, concealed from plaintiffs Julie Sejpal and Vinod Sejpal:

a. that based on her age alone, plaintiff Julie Sejpal was in a category of women exhibiting a high risk of giving birth to a children with birth defects;

b. that the results of the maternal serum alpha-

fetalprotein (MSAFP) assay provided further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and showed that risk to be dramatically higher than normal, even for a woman her age;

c. that the lab report on the maternal serum alpha-fetalprotein (MSAFP) assay indeed even set forth the specific warning that defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should advise plaintiff Julie Sejpal of the option of amniocentesis;

d. that amniocentesis would have revealed to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

e. that plaintiffs Julie Sejpal and Vinod Sejpal had the option of terminating the pregnancy;

f. that it was standard medical practice under the circumstances to perform an amniocentesis;

g. that it was standard medical practice under the circumstances to provide family counseling;

h. that it was standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

i. that it was standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy.

24. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, concealed from plaintiffs Julie Sejpal and Vinod Sejpal the matters described in the preceding paragraphs 18 (a) through 18 (i), inclusive, either:

a. intentionally; and/or

b. recklessly; and/or

c. as a result of gross negligence; and/or

d. negligently.

25. On or about August 30, 1989, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc. Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley performed a Ceasarean section on plaintiff

Julie Sejpal.

26. On or about August 30, 1989, defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley, and Donald R. McKinley performed an elective tubal ligation, voluntary sterilization, on plaintiff Julie Sejpal.

27. On or about August 30, 1989, plaintiff Julie Sejpal gave birth to plaintiff Erica Lynn Sejpal, born with Down's Syndrome.

Count I

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN CEASAREAN SECTION

28. The above paragraphs 1 through 27, inclusive, are incorporated herein by reference.

29. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, refused and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal:

a. that based on her age alone, plaintiff Julie Sejpal was in a category of women exhibiting a high risk of giving birth to a children with birth defects;

b. that the results of the maternal serum alpha-fetalprotein (MSAFP) assay provided further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and showed that risk to be dramatically higher than normal, even for a woman her age;

c. that the lab report on the maternal serum alpha-fetalprotein (MSAFP) assay indeed even set forth the specific warning that defendants Corson, Mitchell, Tomhave and

McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. MckInley should advise plaintiff Julie Sejpal of the option of amniocentesis;

d. that amniocentesis would have revealed to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

e. that plaintiffs Julie Sejpal and Vinod Sejpal had the option of terminating the pregnancy;

f. that it was standard medical practice under the circumstances to perform an amniocentesis;

g. that it was standard medical practice under the circumstances to provide family counseling;

h. that it was standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

i. that it was standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy; and thus made express or implied false representations:

j. that based upon her age plaintiff Julie Sejpal was not in a category of women exhibiting a high risk of giving birth to children with birth defects;

k. that the results of the maternal serum alpha-fetalprotein (MSAFP) assay did not provide further information about the risk of plaintiff Julie Sejpal giving birth to a child with birth defects and show that risk to be dramatically higher than normal, even for a woman her age;

l. that the lab report on the maternal serum alpha-fetalprotein (MSAFP) assay did not set forth the specific warning that defendants Corson, Mitchell, Tomhave and McKinley, M.D.s, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley should not advise plaintiff Julie Sejpal of the option of amniocentesis;

m. that amniocentesis would not reveal to plaintiffs Julie Sejpal and Vinod Sejpal that their child was to be born with Down's Syndrome;

n. that plaintiffs Julie Sejpal and Vinod Sejpal did not

have the option of terminating the pregnancy;

o. that it was not standard medical practice under the circumstances to perform an amniocentesis;

p. that it was not standard medical practice under the circumstances to proved family counseling;

q. that it was not standard medical practice under the circumstances to provide counseling regarding the possibility of additional children;

r. that it was not standard medical practice under the circumstances to provide advise persons in the position of plaintiffs of the option of terminating the pregnancy.

30. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S. Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, refused and/or failed to reveal to plaintiffs Julie Sejpal and Vinod Sejpal the matters described in the preceding paragraphs 18 (a) through 18 (i), inclusive, either:

a. intentionally; and/or

b. recklessly; and/or

c. as a result of gross negligence; and/or

d. negligently.

31. Defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley made express or implied false representations as described in the preceding paragraphs 18 (j) through 18 (r), inclusive, either:

a. intentionally; and/or

b. recklessly; and/or

c. as a result of gross negligence; and/or

d. negligently.

32. Plaintiff Julie Sejpal would not have undergone the Ceasarean section performed by defendants Corson, Mitchell, Tomhave, and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley but for the acts described in the above paragraphs 29, 30, and 31.

33. As a result of the acts described in the above paragraphs 29, 30, and 31, on or about August 30, 1989 plaintiff Julie Sejpal did undergo as Ceasarean section.

34. As a result of the Ceasarean section performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, plaintiff suffered injuries as follows:

a. medical bills;
b. permanent injury;
c. pain and suffering;
d. emotional distress;
e. other injuries.

WHEREFORE plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave, and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count II

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN TUBAL LIGATION AND STERILIZATION

35. The above paragraphs 28 through 31, inclusive, are incorporated herein by reference.

36. Plaintiff Julie Sejpal would not have undergone tubal ligation and sterilization performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley but for the acts described in the above paragraphs 28 through 31, inclusive.

37. As a result of the acts described in the above paragraphs 28 through 31, inclusive, on or about August 30, 1989 plaintiff Julie Sejpal did undergo a tubal ligation and sterilization.

38. As a result of the tubal ligation and sterilization performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, plaintiff suffered injuries as follows:

a. medical bills;
b. permanent injury;
c. permanent sterilization;
d. pain and suffering;
e. emotional distress;
f. other injuries.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count III

JULIE SEJPAL and VINOD SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN WRONGFUL BIRTH

39. The above paragraphs 29 through 31, inclusive, are incorporated herein by reference.

40. Plaintiff Julie Sejpal would not have given birth to her child plaintiff Erica Lynn Sejpal but for the acts described in the

above paragraphs 28 through 31, inclusive.

41. As a result of the acts described in the above paragraphs 28 through 31, inclusive, on or about August 30, 1989 plaintiff Julie Sejpal did give birth to her child Erica Lynn Sejpal.

42. As a result of the birth of Erica Lynn Sejpal plaintiffs Julie Sejpal and Vinod Sejpal suffered injuries as follows:

a. medical bills incidental to the birth;

b. medical bills incurred and to be incurred during a lifetime of raising and caring for a Down's Syndrome child;

c. pain and suffering;

d. emotional distress;

e. other injuries.

WHEREFORE, plaintiffs Julie Sejpal and Vinod Sejpal respectfully request judgment in their favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S. Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count IV

JULIE SEJPAL

v.

CONEMAUGH VALLEY MEMORIAL HOSPITAL

CORPORATE LIABILITY FOR FAILURE TO MONITOR AND REVIEW AND THUS PREVENT FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN CEASAREAN SECTION

43. The above paragraphs 28 through 31, inclusive, are incorporated herein by reference.

44. The acts about which plaintiff complains were provided within the facilities of defendant Conemaugh Valley Memorial Hospital.

45. Defendant Conemaugh Valley Hospital had a duty to exercise proper care for its patients and to supervise, monitor and

review the medical services provided by defendants Corson, Mitchell, Tomhave, and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley.

46. Defendant Conemaugh Valley Hospital breached its duty to exercise proper care for its patients and to supervise, monitor and review the medical services provided by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley.

47. As a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive, plaintiff Julie Sejpal underwent the Ceasarean section performed by defendants Corson, Mitchell, Tomhave and Mckinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley.

48. Plaintiff Julie Sejpal would not have undergone the Ceasarean section performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley but for defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive.

49. As a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive, on or about August 30, 1989 plaintiff Julie Sejpal did undergo a Ceasarean section.

50. As a result of the Ceasarean section performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, and as a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive, plaintiff suffered injuries as follows:

a. medical bills;
b. permanent injury;
c. pain and suffering;
d. emotional distress;

e. other injuries.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count V

JULIE SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

CORPORATE LIABILITY FOR FAILURE TO MONITOR AND REVIEW AND THUS TO PREVENT FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN TUBAL LIGATION AND STERILIZATION

51. The above paragraphs 43 through 46, inclusive, are incorporated therein by reference.

52. As a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive, plaintiff Julie Sejpal underwent the tubal ligation and sterilization performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley.

53. Plaintiff Julie Sejpal would not have undergone tubal ligation and sterilization performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley but for defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive.

54. As a result of the tubal ligation and sterilization performed by defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, INc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley,

and as a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive.

Plaintiff suffered injuries as follows:

a. medical bills;
b. permanent injury;
c. permanent sterilization;
d. pain and suffering;
e. emotional distress;
f. other injuries.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count VI

JULIE SEJPAL and VINOD SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

CORPORATE LIABILITY FOR FAILURE TO MONITOR AND REVIEW AND THUS PREVENT FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN WRONGFUL BIRTH

55. The above paragraphs 43 through 46, inclusive are incorporated herein by reference.

56. As a result of defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive, plaintiff Julie Sejpal gave birth to her child plaintiff Erica Lynn Sejpal.

57. Plaintiff Julie Sejpal would not have given birth to her child plaintiff Erica Lynn Sejpal but for defendant Conemaugh Valley Memorial Hospital's breach of its duty as described in the above paragraphs 43 through 46, inclusive.

58. As a result of the birth of Erica Lynn Sejpal plaintiffs

Julie Sejpal and Vinod Sejpal suffered injuries as follows:

a. medical bills incidental to the birth;

b. medical bills incurred and to be incurred during a lifetime of raising and caring for a Down's Syndrome child;

c. pain and suffering;

d. emotional distress;

e. other injuries.

WHEREFORE, plaintiffs Julie Sejpal and Vinod Sejpal respectfully request judgment in their favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count VII

JULIE SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S 201-1 ET SEQ.) RESULTING IN CEASAREAN SECTION

59. The above paragraphs 28 through 34, inclusive are incorporated herein by reference.

60. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.).

61. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE plaintiff seeks a judgment against defendants

in excess of twenty-thousands dollars ($20,000.00) which shall include an award in an amount to three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count VIII

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN TUBAL LIGATION AND STERILIZATION

62. The above paragraphs 35 through 38, inclusive are incorporated herein by reference.

63. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73-P.S. 201-1 et seq.).

64. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE plaintiff seeks a judgment against defendants in excess of twenty-thousand dollars ($20,000.00) which shall include an award in an amount of three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count IX

JULIE SEJPAL and VINOD SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN WRONGFUL BIRTH

65. The above paragraphs 39 through 42, inclusive are incorporated herein by reference.

66. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.).

67. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE, plaintiff seeks a judgment against defendants in excess of twenty-thousand dollars ($20,000.00) which shall include an award in an amount of three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count X

JULIE SEJPAL

v.

CONEMAUGH VALLEY MEMORIAL HOSPITAL

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN CEASAREAN SECTION

68. The above paragraphs 43 through 50, inclusive are incorporated herein by reference.

69. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.).

70. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE, plaintiff seeks a judgment against defendants in excess of twenty-thousands dollars ($20,000.00) which shall include an award in an amount of three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count XI

JULIE SEJPAL

v.

CONEMAUGH VALLEY MEMORIAL HOSPITAL

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN TUBAL LIGATION AND STERILIZATION

71. The above paragraphs 51 through 54, inclusive are incorporated herein by reference.

72. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.).

73. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE, plaintiff seeks a judgment against defendants in excess of twenty-thousand dollars ($20,000.00) which shall include an award in an amount of three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count XII

JULIE SEJPAL and VINOD SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN WRONGFUL BIRTH

74. The above paragraphs 55 through 58, inclusive are incorporated herein by reference.

75. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.).

76. Plaintiff suffered an ascertainable loss as the result of the defendants' use or employment of these unfair methods of competition and unfair or deceptive acts or practices.

WHEREFORE plaintiff seeks a judgment against defendants in excess of twenty-thousand dollars ($20,000.00) which shall include an award in an amount of three times the actual damages sustained pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. 201-9.2).

Count XIII

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S,

INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

MEDICAL MALPRACTICE RESULTING IN CEASAREAN SECTION

77. The above paragraphs 28 through 34, inclusive are incorporated herein by reference.

78. The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

79. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

WHEREFORE plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XIV

JULIE SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

MEDICAL MALPRACTICE RESULTING IN TUBAL LIGATION AND STERILIZATION

80. The above paragraphs 35 through 38, inclusive are incorporated herein by reference.

81. The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendants

and their agents, servants and employees.

82. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XV

JULIE SEJPAL and VINOD SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

MEDICAL MALPRACTICE
RESULTING IN WRONGFUL BIRTH

83. The above paragraphs 39 through 42, inclusive are incorporated herein by reference.

84. The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

85. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XVI

JULIE SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

HOSPITAL MALPRACTICE
RESULTING IN CEASAREAN SECTION

86. The above paragraphs 43 through 50, inclusive are incorporated herein by reference.

87. THe injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and its agents, servants and employees.

88. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and their agents, servants and employees.

WHEREFORE, plaintiff Julie Sejpal respectfully request judgment in her favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XVII

JULIE SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

HOSPITAL MALPRACTICE
RESULTING IN TUBAL LIGATION AND STERILIZATION

89. The above paragraphs 51 through 54, inclusive are incorporated herein by reference.

90. The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and its agents, servants

and employees.

91. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and their agents, servants and employees.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XVIII

JULIE SEJPAL and VINOD SEJPAL
v.
CONEMAUGH VALLEY MEMORIAL HOSPITAL

HOSPITAL MALPRACTICE
RESULTING IN WRONGFUL BIRTH

92. The above paragraphs 55 through 58, inclusive are incorporated herein by reference.

93. The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and its agents, servants and employees.

94. The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendant Conemaugh Valley Memorial Hospital and their agents, servants and employees.

WHEREFORE, plaintiffs Julie Sejpal and Vinod Sejpal respectfully request judgment in their favor and against defendant Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XIX

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FAILURE TO OBTAIN INFORMED CONSENT REGARDING CEASAREAN SECTION

95. The above paragraphs 28 through 34, inclusive are incorporated herein by reference.

96. Defendants failed to obtain the informed consent of plaintiff for the Ceasarean section they performed.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XX

JULIE SEJPAL
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FAILURE TO OBTAIN INFORMED CONSENT REGARDING TUBAL LIGATION AND STERILIZATION

97. The above paragraphs 28 through 34, inclusive are incorporated herein by reference.

98. Defendants failed to obtain the informed consent of

plaintiff for the tubal ligation and sterilization they performed.

WHEREFORE, plaintiff Julie Sejpal respectfully requests judgment in her favor and against defendants Corson, Mitchell, Tomhave and McKinley, M.D.S, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley in an amount in excess of twenty-thousand dollars ($20,000.00).

Count XXI

ERICA LYNN SEJPAL, a minor,
by JULIE SEJPAL, her guardian,
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S, INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY
and
CONEMAUGH VALLEY MEMORIAL HOSPITAL

WRONGFUL LIFE

99. The above paragraphs 1 through 98 inclusive, are incorporated herein by reference.

100. As a result of the above described acts of defendants, plaintiff Erica Lynn Sejpal will be forced to live a life she would have chosen not to live.

101. As a result of the above described acts of defendants, plaintiff Erica Lynn Sejpal will suffer injuries as follows:

a. medical bills;
b. pain and suffering;
c. the need for special care throughout her lifetime;
d. mental suffering.

WHEREFORE, plaintiff Erica Lynn Sejpal, by her guardian, Julie Sejpal, respectfully requests judgment in her favor and

against defendants Corson, Mitchell, Tomhave and McKinley, M.D.s, Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley and Conemaugh Valley Memorial Hospital in an amount in excess of twenty-thousand dollars ($20,000.00)

Respectfully submitted,
BEHREND & ERNSBERGER

/s/
Joseph E. Hudak

JULIE SEJPAL and VINOD SEJPAL, and ERICA LYNN SEJPAL, a minor, by JULIE SEJPAL, Her guardian, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
v.	:	
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL,	:	CIVIL ACTION - LAW NO. 1991 - 2288 - A
Defendants.	:	JURY TRIAL DEMANDED

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

NOW, come the Defendants, CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, and DONALD R. McKINLEY, by and through their Attorneys, JUBELIRER, CAROTHERS, KRIER & HALPERN, and file the within Preliminary Objections to Plaintiffs' Complaint and in support thereof aver as follows:

DEMURRER / MOTION TO STRIKE

1.

The within action is civil in nature filed by Plaintiffs, JULIE SEJPAL and VINOD SEJPAL, individually, and by Plaintiff, JULIE SEJPAL, in her capacity as guardian of their child, ERICA LYNN SEJPAL. In this matter, it is alleged, among other things, that due and owing to the alleged acts or omissions of these Defendants, Plaintiffs were caused to sustain serious injuries from which they now seek redress.

2.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, set forth and/or purport to set forth a

cause of action for injuries and damages allegedly sustained by them as a result of the "Wrongful Birth" of their child, ERICA LYNN SEJPAL.

3.

Specifically, Count III of Plaintiffs' Complaint states in pertinent part as follows:

JULIE SEJPAL and VINOD SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S. INC., HAMPTON, CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

FRAUDULENT MISREPRESENTATION (DECEIT) RESULTING IN WRONGFUL BIRTH

40. Plaintiff Julie Sejpal would not have given birth to her child plaintiff Erica Lynn Sejpal but for the acts described in the above paragraphs 28 through 31, inclusive.

4.

In the above-referenced Count III and paragraph 40 of Plaintiffs' Complaint, Plaintiffs set forth what purports to be a separate and independent cause of action based upon the "Wrongful Birth" of their child.

5.

Insofar as the aforesaid allegations as contained in Count III of Plaintiffs' Complaint attempts to set forth a cause of action for "Wrongful Birth," said allegations of Plaintiffs' Complaint are subject to demurrer, or in the alternative, said allegations should be stricken.

6.

Pennsylvania does not recognize a cause of action and/or a claim for damages based upon "Wrongful Birth." In fact, pertinent statutes of this Commonwealth expressly provide that no cause of action or award of damages shall exist on behalf of any person based on a claim that, but for an act or omission of the defendant(s), a person once conceived would not or should not

have been born. *See, 42 Pa.C.S.A. Section 8305(a).*

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to the Plaintiffs' Complaint with respect to Count III and Paragraph 40, or in the alternative, that the allegations pertaining to "Wrongful Birth" and damages purportedly suffered as a result of said cause of action be stricken from the Complaint for lack of conformity to law.

DEMURRER / MOTION TO STRIKE

7.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiff, JULIE SEJPAL, in her capacity as guardian of Plaintiffs' child, ERICA LYNN SEJPAL, purportedly sets forth a cause of action for injuries and damages allegedly sustained by their child as a result of the "Wrongful Life" of their child, ERICA LYNN SEJPAL.

8.

Specifically, Count XXI of Plaintiffs' Complaint states in pertinent part as follows:

ERICA LYNN SEJPAL, a minor,
by JULIE SEJPAL, her guardian,
v.
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S. INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY
and
CONEMAUGH VALLEY MEMORIAL HOSPITAL

WRONGFUL LIFE

100. As a result of the above described acts of defendants, plaintiff Erica Lynn Sejpal will be forced to live a life she would have chosen not to live.

9.

In the above-referenced Count XXI and Paragraph 100 of Plaintiffs' Complaint, Plaintiffs set forth what purports to be a separate and independent cause of action based upon the

"Wrongful Life" of their child.

10.

Insofar as the aforesaid allegations as contained in Count XXI and Paragraph 100 of Plaintiffs' Complaint attempt to set forth a cause of action for "Wrongful Life," said allegations of Plaintiffs Complaint are subject to demurrer, or in the alternative, said allegations should be stricken.

11.

Pennsylvania does not recognize a cause of action and/or a claim for damages based upon "Wrongful Life." In fact, pertinent statutes of this Commonwealth expressly provide that no cause of action shall exist on behalf of any person based on a claim of that person that, but for an act or omission of the defendant(s), that person, once conceived would or should have been aborted. *See, 42 Pa.C.S.A. Section 8305(b).*

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to the Plaintiffs' Complaint with respect to Count XXI and Paragraph 100, or in the alternative, that the allegations pertaining to "Wrongful Life" and damages purportedly suffered as a result of said cause of action be stricken from the Complaint for lack of conformity to law.

DEMURRER / MOTION TO STRIKE

12.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, purportedly set forth a cause of action for injuries and damages allegedly sustained by them as a result of the "Wrongful Birth" of their child, ERICA LYNN SEJPAL. Said alleged cause of action is contained in the general cause of action entitled "Medical Malpractice."

13.

Specifically, Count XV of Plaintiffs' Complaint states in pertinent part as follows:

JULIE SEJPAL and VINOD SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY

M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

MEDICAL MALPRACTICE RESULTING IN WRONGFUL BIRTH

14.

In the above-referenced Count XXV of Plaintiffs' Complaint, Plaintiffs set forth what purports to be a separate and independent cause of action based upon the "Wrongful Birth" of their child. Said alleged cause of action is encaptioned in terms of a medical malpractice action.

15.

Insofar as the aforesaid allegations as contained in Count XXV of Plaintiffs' Complaint attempts to set forth a cause of action for "Wrongful Birth," said allegations of Plaintiffs' Complaint are subject to demurrer, or in the alternative, said allegations should be stricken.

16.

Pennsylvania does not recognize a cause of action and/or a claim for damages based upon "Wrongful Birth." In fact, pertinent statutes of this Commonwealth expressly provide that no cause of action or award of damages shall exist on behalf of any person based on a claim that, but for an act or omission of the defendant(s), a person once conceived would not or should not have been born. *See, 42 Pa.C.S.A. Section 8305(a).*

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to the Plaintiffs' Complaint with respect to Count XV, or in the alternative, that the allegations pertaining to "Wrongful Birth" and damages purportedly suffered as a result of said cause of action be stricken from the Complaint for lack of conformity to law.

DEMURRER / MOTION TO STRIKE

17.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, purportedly set forth a cause of action

for injuries and damages allegedly sustained by them as a result of the "Wrongful Birth" of their child, ERICA LYNN SEJPAL. Said alleged cause of action is contained in the general cause of action under the Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq.

18.

Specifically, Count IX of Plaintiffs' Complaint states in pertinent part as follows:

JULIE SEJPAL and VINOD SEJPAL

v.

CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY

VIOLATION OF UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (73 P.S. 201-1 ET SEQ.) RESULTING IN WRONGFUL BIRTH

66. The misrepresentations, omissions, and concealment of facts by defendants constituted unfair methods of competition and unfair or deceptive acts or practices within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (73 P.S. 201-1 et seq.)

19.

In the above-referenced Count and Paragraph of Plaintiffs' Complaint, Plaintiffs set forth what purports to be a separate and independent cause of action based upon the "Wrongful Birth" of their child. Said alleged cause of action is contained within the general cause of action based upon the Unfair Trade Practices and Consumer Protection act, 73 P.S. Sections 201-1 et seq.

20.

Insofar as the aforesaid allegations as contained in Count IX and Paragraph 66 of Plaintiffs' Complaint attempt to set forth a cause of action for "Wrongful Birth," said allegations of Plaintiffs' Complaint are subject to demurrer, or in the alternative, said allegations should be stricken.

21.

Pennsylvania does not recognize a cause of action and/or a claim for damages based upon "Wrongful Birth." In fact, pertinent statutes of this Commonwealth expressly provide that no cause of action or award of damages shall exist on behalf of any person based on a claim that, but for an act or omission of the defendant(s), a person once conceived would not or should not have been born. *See, 42 Pa.C.S.A. Section 8305(a).*

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to the Plaintiffs' Complaint with respect to Count IX and Paragraph 66, or in the alternative, that the allegations pertaining to "Wrongful Birth" and damages purportedly suffered as a result of said cause of action be stricken from the Complaint for lack of conformity to law.

DEMURRER / MOTION TO STRIKE

22.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, purportedly set forth various causes of action for injuries and damages suffered as a result of alleged acts, omissions and/or misrepresentations by these Defendants. Said alleged causes of action are contained in several Counts asserting a cause of action based upon the Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq.

23.

Specifically, Counts VII, VIII, IX, X, XI, and XII of Plaintiffs' Complaint purportedly assert causes of action against these Defendants, either directly or by implication, upon the basis that said Defendants allegedly violated the Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq., by their asserted omissions, concealment of facts and/or misrepresentations in the rendering of medical services.

24.

Insofar as the aforesaid allegations as contained in the above-enumerated Counts of Plaintiffs' Complaint attempt to set forth a cause of action based upon the Unfair Trade Practices and Consumer Protection Act against these Defendants, either directly or by implication, said allegations of Plaintiffs' Complaint are

subject to demurrer, or in the alternative, said allegations should be stricken.

25.

The law of this Commonwealth is clear in this respect. Although the Act does not expressly exclude the services performed by physicians, it is equally clear that the legislature did not intend the Act to apply to physicians rendering medical services. *See, Gatten v. Merzi*, 397 Pa.Super. 148, 579 A.2d 974 (1990).

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to the Plaintiffs' Complaint with respect to Counts VII, VIII, IX, X, XI, and XII, insofar as said counts implicate these defendants, either directly or by implication, or in the alternative, that the allegations pertaining to the alleged causes of action based upon the Unfair Trade Practices and Consumer Protection Act, 73 Pa.C.S.A., Section 201-1 et seq., and damages purportedly suffered as a result of violations of the Act be stricken from the Complaint for lack of conformity to law.

MOTION TO STRIKE

26.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, purportedly set forth various causes of action for injuries and damages suffered as a result of alleged acts, omissions and/or misrepresentations by these Defendants. Said alleged cause of action are contained in several counts asserting a cause of action based upon the Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq.

27.

Specifically, Counts VII, VIII, and IX of Plaintiffs' Complaint purportedly assert causes of action against these Defendants upon the basis that said Defendants allegedly violated the Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq., by alleged omissions, concealment of facts and/or misrepresentations.

28.

By reference, Plaintiffs incorporate in the above-enumerated Counts claims for damages as a result of the alleged pain and suffering and emotional distress arising out of the purported conduct of these Defendants. Said conduct allegedly amounts to a violation of said Act.

29.

The Unfair Trade Practices and Consumer Protection Act, 73 P.S. Sections 201-1 et seq., permits recovery by private action those damages which are ascertainable losses of money and/or property, real or personal, as a result of a violation of said Act. *See, 73 P.S. Section 9.2(a).*

30.

However, recovery for alleged injuries arising out of pain and suffering and/or emotion distress are not duly ascertainable so as to be recoverable under the Act. *See, In re Bryant*, 111 B.R. 474 (E.D. Pa. 1990).

31.

Insofar as the aforesaid allegations as contained in Counts VII, VIII, and IX of Plaintiffs' Complaint attempt to set forth claims for damages arising from purported pain and suffering and/or emotional distress based upon the Unfair Trade Practices and Consumer Protection Act, said allegations Plaintiffs' Complaint should be stricken.

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their demurrer to strike the Plaintiffs' Complaint with respect to Counts VII, VIII, and IX, insofar as Plaintiffs alleged damages arising out of purported pain and suffering and/or emotional distress under the Unfair Trade Practices and Consumer Protection Act, 73 Pa.C.S.A., Section 201-1 et seq., for lack of conformity to law.

MOTION TO STRIKE

32.

Plaintiffs, throughout their Complaint, assert that they have suffered damages "in an amount in excess of twenty-thousand dollars
($20,000.00)." Said allegations are uniformly contained in the "WHEREFORE" clauses of said Complaint.

33.

Relevant to this motion to strike, Pennsylvania Rule of Civil Procedure No. 1021 states in pertinent part as follows:

> (b) Any pleading demanding relief for unliquidated damages shall without claiming any specific sum set forth **only** whether the amount is or is not in excess of **$10,000**.

34.

A motion to strike is appropriate to strike off a pleading, or portion thereof, because of lack of conformity to law or rule of court. *See, Pa.R.C.P. No. 1017(b)(2).* Insofar as the aforesaid allegations as contained in the "WHEREFORE" clauses of Plaintiffs' Complaint attempt to set forth claims for damages in excess of twenty-thousand dollars ($20,000.00), said allegations of Plaintiffs' Complaint should be stricken.

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their motion to strike the Plaintiffs' Complaint with respect the allegations of damages in excess of twenty-thousand dollars ($20,000.00), as contained in the "WHEREFORE" clauses of said Complaint, for lack of conformity to law and/or rule of court.

MOTION TO STRIKE AND/OR COMPEL A MORE SPECIFIC COMPLAINT

35.

In addition to the various allegations of negligence contained in Plaintiffs' Complaint, Plaintiffs, JULIE and VINOD SEJPAL, in their capacity as parents, and JULIE SEJPAL, in her capacity as guardian for their child, ERICA LYNN SEJPAL, state and/or incorporate by reference language which may be construed as setting forth a claim for punitive damages.

36.

Specifically, Paragraphs 19, 20, 22, 24, 30, 31, as well as those paragraphs which incorporate the above-enumerated Paragraphs of Plaintiffs' Complaint, utilize the terms "intentionally" and "recklessly," the same of which may purportedly support a claim for punitive damages.

37.

Insofar as the above-referenced allegations are construed to support a claim for punitive damages, Plaintiffs have failed to state with specificity material facts upon which to base said claim. Pursuant to Pennsylvania Rule of Civil Procedure No. 1019(a), a claim such as is now in question relative to punitive damages shall contain material facts stated in a concise and summary form.

38.

A motion to strike is appropriate to strike off a pleading, or portion thereof, because of lack of conformity to law or rule of court. *See, Pa.R.C.P. No. 1017(B)(2).* Insofar as the aforesaid allegations as contained in the above-enumerated Paragraphs of Plaintiffs' Complaint, as well as those paragraphs which incorporate the same by reference, attempt to set forth a claim for punitive damages, said allegations of Plaintiffs' Complaint should be stricken.

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their motion to strike the Plaintiffs' Complaint with respect the allegations as contained in Paragraphs 19, 20, 22, 24, 30, and 31, as well as those paragraphs that incorporate the above-enumerated Paragraphs of Plaintiffs' Complaint by reference, as the same purports to set forth a claim for punitive damages without alleging material facts which support said cause of action, contrary to Pennsylvania Rule of Civil Procedure No. 1019(a).

MOTION TO STRIKE AND/OR COMPEL A MORE SPECIFIC COMPLAINT

39.

Paragraphs 77, 78, 81, 82, 84, 85, 87, 88, 90, and 91 of Plaintiffs' Complaint, the same of which are now in question, allege in pertinent part as follows:

> The injuries suffered by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.
>
> The damages incurred by plaintiff were a direct and proximate result of the negligence and carelessness of defendants and their agents, servants and employees.

40.

The allegations delineated in the above-referenced Paragraphs of Plaintiffs' Complaint fail to allege with specificity the material facts upon which such allegations may be based and are therefore in direct violation of Pa.R.C.P. No. 1019(a).

Plaintiffs set forth allegations of "negligence and carelessness" in each of the foregoing Paragraphs. Although each Paragraph now at issue is preceded with an incorporation clause, the use of these phrases allows Plaintiffs' to plead negligence and carelessness in a general manner.

41.

Such general allegations as refereed to above can be read to encompass every recognized theory of negligence in contravention to the principle enunciated in *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, these Defendants respectfully request your Honorable Court to grant their motion to strike the Plaintiffs' Complaint with respect the allegations as contained in Paragraphs 77, 78, 81, 82, 84, 85, 87, 88, 90. and 91, the same of which were delineated above, as a result of Plaintiffs' failure to allege with specificity any material facts which support said cause of action, contrary to Pennsylvania Rule of Civil Procedure NO. 1019(a) and relevant case law.

JUBELIRER, CAROTHERS, KRIER & HALPERN
By:/s/_____

Frank J. Stanek, Esquire
PA I.D. #50487
Park View Center
Ten Sheraton Drive
Altoona, PA 16601
(814) 943-1149

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Preliminary Objections** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 10th day of December, 1991, and addressed as follows:

Kenneth W. Behrend, Esquire
BEHREND AND ERNSBERGER
2400 Grant Building
Pittsburgh, PA 15219

Frank J. Hartye, Esquire
PFAFF, McINTYRE, DUGAS & HARTYE
P.O. Box 533
Hollidaysburg, PA 16648

JUBELIRER, CAROTHERS, KRIER & HALPERN

By:/s/_____
Frank J. Stanek, Esquire
PA I.D. #50487

JULIE SEJPAL and VINOD SEJPAL, and ERICA LYNN SEJPAL, a minor, by JULIE SEJPAL, her guardian, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
vs.	:	
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL, Defendants.	:	NO. 1991 - 2288 - A

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes the Defendant, CONEMAUGH VALLEY MEMORIAL HOSPITAL, by and through its attorneys, PFAFF, McINTYRE, DUGAS & HARTYE, and files that following Preliminary Objections to Plaintiffs' Complaint.

1. Plaintiff initiated the within action by filing a Writ of Summons. Thereafter Plaintiff filed a Complaint against each of the named Defendants.

2. Counts VI, XII and XVIII attempt set forth a cause of action against Defendant hospital for "wrongful birth." No such cause of action exists in Pennsylvania at this time and therefore Counts VI, XII and XVII should be dismissed.

3. Counts X, XI and XII of Plaintiffs' Complaint allege liability against Defendant hospital based upon the Consumer Protection Law 73 P.S. Section 201 et seq.

4. The Plaintiffs' Complaint does not contain any facts upon which it can be concluded that the Defendant sold services primarily for personal, family or household to the Plaintiff, or that said services were sold in the stream of commerce or trade.

5. The Unfair Trade Practice and Consumer Protection Law pertains to fraudulent or deceitful practices of those individuals in sales or services, dealing in trade or commerce.

6. The Plaintiffs fail to state a cause of action in

Counts X, XI and XII against Conemaugh Valley Memorial Hospital based upon the Unfair Trade Practices and Consumer Protection Law. Therefore, Defendant respectfully requests that counts X, XI and XII be dismissed with prejudice.

7. The allegations in Plaintiffs' Complaint against Conemaugh Valley Memorial Hospital are based upon corporate liability for the actions of the Defendant physicians. Conemaugh Valley Memorial Hospital hereby incorporates by reference any and all Preliminary Objections which may be filed on behalf of the Defendant physicians as though the same were set forth herein at length.

WHEREFORE, Defendant, Conemaugh Valley Memorial Hospital requests this Court to grant its Preliminary Objections as more specifically set forth above.

PFAFF, McINTYRE, DUGAS & HARTYE

/s/ **FRANK J. HARTYE**
Attorneys for Defendant,
CONEMAUGH VALLEY MEMORIAL HOSPITAL
FRANK J. HARTYE, ESQUIRE
PA I.D. #25568
P. O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

TO: **THE WITHIN NAMED PARTIES**
You are hereby notified to plead to
the enclosed **PRELIMINARY OBJECTIONS**
within twenty (2) days of service
hereof a default judgment may be
entered against you.

/s/ **FRANK J. HARTYE**
Attorneys for Defendant,
CONEMAUGH VALLEY MEMORIAL HOSPITAL

JULIE SEJPAL and VINOD SEJPAL, and ERICA LYNN SEJPAL, a minor, by JULIE SEJPAL, her guardian, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
vs.	:	
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL, Defendants.	:	NO. 1991 - 2288 - A

PLAINTIFFS' ANSWER TO PRELIMINARY OBJECTIONS OF DEFENDANTS CORSON, MITCHELL, TOMHAVE & McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY and DONALD R. McKINLEY

The plaintiffs, by their counsel, Joseph E. Hudak, file this answer to the preliminary objections of defendants Corson, Mitchell, Tomhave & McKinley, M.D.S., Inc., Hampton Corson, Donald Mitchell, Robert Tomhave, Richard G. McKinley and Donald R. McKinley, and in support thereof respectfully submit as follows:

I.

1. Defendant's preliminary objections raise 42 Pa.C.S. 8305(a) and (b). These provide:

> "(a) Wrongful birth -- There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should have been born. . . .
>
> "(b) Wrongful Life -- There shall be no cause of action on behalf of any person based on a claim of that person that, but for an act or omission of the defendant, the person would not have been conceived or, once conceived, would or should have been aborted."

2. If enforced by Pennsylvania courts, these statutes will have the effect of depriving plaintiffs of various constitutionally protected rights. Specifically, the plaintiffs will be deprived of the right to property, the right to access to court, the right to privacy, and other rights under *Roe v. Wade*, 410 U.S. 113 (1973), the Due Process Clause, and other provisions of the United States Constitution.

3. Moreover, if enforced by the Pennsylvania courts, these statutes will have the effect of chilling the exercise of the right to property, the right to access to court, the right to privacy, and other rights under *Roe v. Wade*, 410 U.S. 113 (1973), the Due Process Clause, and other provisions of the United States Constitution by all women and all unborn children in the state of Pennsylvania.

4. These statutes violate the United States Constitution and should not be enforced.

II.

5. In addition, Defendants' preliminary objections contend that the Pennsylvania Consumer Protection Law, 73 P.S. 201 *et seq.* does not apply to the transactions between plaintiffs and defendants.

6. This is incorrect. The Pennsylvania Consumer Protection Law, 73 P.S. 201 *et seq.* does and/or should apply to the transactions between plaintiffs and defendants.

WHEREFORE, plaintiffs respectfully request that the preliminary objections of defendant Conemaugh Valley Memorial Hospital be overruled.

Respectfully submitted,

/s/_____

Joseph E. Hudak
Counsel for Plaintiffs
2400 Grant Building
Pittsburgh, PA 15219
(412) 391-2515

CERTIFICATE OF SERVICE

I, Joseph E. Hudak, counsel for plaintiffs, certify that this 31st day of January, 1992 I served true and correct copies of the foregoing answer to preliminary objections upon the followinjg [sic] by regular mail and/or hand delivery:

Pfaff, McIntyre, Dugas & Hartye
P.O. Box 533
Holidaysburg, Pa 16648--0533
Jubelier, Carothers, Krier & Halpern
10 Sheraton Drive
Altoona, Pa 16603

/s/
Joseph E. Hudak

JULIE SEJPAL and VINOD SEJPAL, and ERICA LYNN SEJPAL, a minor, by JULIE SEJPAL, her guardian, Plaintiffs,	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
vs.	:	
CORSON, MITCHELL, TOMHAVE and McKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE, RICHARD G. McKINLEY, DONALD R. McKINLEY and CONEMAUGH VALLEY MEMORIAL HOSPITAL, Defendants.	:	NO. 1991 - 2288 - A

PLAINTIFFS' ANSWER TO PRELIMINARY OBJECTIONS OF DEFENDANT CONEMAUGH VALLEY MEMORIAL HOSPITAL

The plaintiffs, by their counsel, Joseph E. Hudak, file this answer to the preliminary objections of defendant Conemaugh Valley Memorial Hospital, and in support thereof respectfully submit as follows:

I.

1. Defendant's preliminary objections raise 42 Pa.C.S. 8305(a) and (b). These provide:

> "(a) Wrongful birth -- There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should have been born. . . .
>
> "(b) Wrongful Life -- There shall be no cause of action on behalf of any person based on a claim of that person that, but for an act or omission of the defendant, the person would not have been conceived or, once conceived, would or should have been aborted."

2. If enforced by Pennsylvania courts, these statutes will have the effect of depriving plaintiffs of various constitutionally protected rights. Specifically, the plaintiffs will be deprived of the right to property, the right to access to court, the right to

privacy, and other rights under *Roe v. Wade*, 410 U.S. 113 (1973), the Due Process Clause, and other provisions of the United States Constitution.

3. Moreover, if enforced by the Pennsylvania courts, these statutes will have the effect of chilling the exercise of the right to property, the right to access to court, the right to privacy, and other rights under *Roe v. Wade*, 410 U.S. 113 (1973), the Due Process Clause, and other provisions of the United States Constitution by all women and all unborn children in the state of Pennsylvania.

4. These statutes violate the United States Constitution and should not be enforced.

II.

5. In addition, Defendant's preliminary objections contend that the Pennsylvania Consumer Protection Law, 73 P.S. 201 *et seq.* does not apply to the transactions between plaintiffs and defendants.

6. This is incorrect. The Pennsylvania Consumer Protection Law, 73 P.S. 201 *et seq.* does and/or should apply to the transactions between plaintiffs and defendants.

WHEREFORE, plaintiffs respectfully request that the preliminary objections of defendant Conemaugh Valley Memorial Hospital be overruled.

Respectfully submitted,

/s/_____

Joseph E. Hudak
Counsel for Plaintiffs
2400 Grant Building
Pittsburgh, PA 15219
(412) 391-2515

CERTIFICATE OF SERVICE

I, Joseph E. Hudak, counsel for plaintiffs, certify that this 31st day of January, 1992 I served true and correct copies of the foregoing answer to preliminary objections upon the followinjg [sic] by regular mail and/or hand delivery:

Pfaff, McIntyre, Dugas & Hartye
P.O. Box 533
Holidaysburg, Pa 16648--0533
Jubelier, Carothers, Krier & Halpern
10 Sheraton Drive
Altoona, Pa 16603

/s/_____
Joseph E. Hudak

SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PITTSBURGH

NO. 581 PITTSBURGH, 1992

JULIE SEJPAL AND VINOD SEJPAL AND ERICA LYNN SEJPAL, A MINOR, BY JULIE SEJPAL, HER GUARDIAN
Appellants,

v.

CORSON, MITCHELL, TOMHAVE & MCKINLEY, M.D.S., INC., HAMPTON CORSON, DONALD MITCHELL, ROBERT TOMHAVE,
RICHARD G. MCKINLEY, DONALD R. MCKINLEY AND CONEMAUGH VALLEY MEMORIAL HOSPITAL
Appellees.

APPLICATION FOR REARGUMENT OF THE OPINION AND ORDER FILED BY THIS COURT ON JANUARY 26, 1993

Appeal from the March 4, 1992 Order of the Court of Common Pleas of Cambria County, Pennsylvania Civil Division, No. 1991-2288-A

Kenneth W. Behrend
Pa. I.D. #00406
BEHREND AND ERNSBERGER
Firm #018
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(412) 391-2515
Counsel for Appellants

TABLE OF CONTENTS

Table of Citations ii

Application for Reargument 1

Appendix A. January 26, 1993 Opinion and Order of the Pennsylvania Superior Court at No. 581 Pittsburgh, 1992 5

Appendix B. March 4, 1992 Opinion and Order of the Court of Common Pleas of Cambria at No. 1991-2288 6

List of Exhibits

Exhibit 1. Pennsylvania Superior Court Civil Docketing Statement 7

Exhibit 2. Letter to Attorney General Enclosing Pennsylvania Superior Court Civil Docketing Statement ... 8

Exhibit 3. Motion for Continuance of Appeal 9

Exhibit 4. Letter to Attorney General Enclosing Motion for Continuance of Appeal 10

Exhibit 5. Brief for the Appellants 11

Exhibit 6. Letter to Attorney General Enclosing Brief Brief for the Appellants 12

Proof of Service 13

TABLE OF CITATIONS

CASES/STATUTES	PAGES
Planned Parenthood v. Casey, 505 U.S._, 112 S.Ct. 2791, 120 L.Ed. 2d 674 (1992)	1
Pa. R.A.P. 521 (a)	2,3,4
Pa. C.S. 8305 (a) and (b)	4

APPLICATION FOR REARGUMENT

THE APPELLANTS, JULIE SEJPAL AND VINOD SEJPAL, AND ERICA LYNN SEJPAL, A MINOR, BY JULIE SEJPAL, HER GUARDIAN, HEREIN, SEJPALS, respectfully request that this Honorable Court grant reargument in order to address the January 26, 1993 Opinion and Order of the Superior Court of Pennsylvania entered at No. 581 Pittsburgh 1992 (See Appendix I). The specific part of said opinion relevant to this Application for Reargument states as follows:

> "...appellants contend that the statutory preclusions place an impermissible burden on a woman's right to an abortion and thus, are unconstitutional under Planned Parenthood v. Casey, 505 U.S. __, 112 S.Ct. 2791, 120 L.Ed. 2d 674 (1992). We find this issue waived since the Commonwealth was not a party to the action and our examination of the record reveals no indication that appellants provided the Attorney General of Pennsylvania with notice of their constitutional challenge in accordance with Pa.R.A.P. 521(a)."
> (Pennsylvania Superior Court Opinion No. 581 Pittsburgh 1992, Page 7, Lines 1 - 9)

The Sejpals' Application for Reargument is based upon the Pennsylvania Superior Court's failure to follow a rule of law and the misapprehending of facts within the Sejpals' appeal. The Superior Court judges have not followed the rule of law that permits constitutional arguments of Pennsylvania statutes with notice given to the Attorney General of Pennsylvania. The judges have overlooked or misapprehended the statutory sufficiency of the repeated notices given to the Attorney General of Pennsylvania by the Sejpals. This Court found a waiver of the issue of the Sejpals' appeal dealing with the constitutional challenge of a statute.

Said waiver was due to this Court's contention that the Sejpals failed to provide Notice to the Attorney General of Pennsylvania as prescribed for under Pa. R.A.P. 521 (a).

Upon a review of the Sejpals' actions, and a review of the record it is evident that the Sejpals did comply with the provisions for providing Notice to the Pennsylvania Attorney General in appeals that challenge the constitutionality of a statute. Pa. R.A.P. 521 (a) states:

> "**(a) Notice**. It shall be the duty of a party who draws in question the constitutionality of any statute in any matter in an appellate court to which the Commonwealth or any officer thereof, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, *to give immediate notice in writing to the Attorney General of Pennsylvania of the existence of the question*; together with a copy of the pleadings or other portion of the record raising the issue, and *to file proof of service of such notice*." (Emphasis added).

The Sejpals complied with the Notice requirement of Pa. R.A.P. 521 (a) in the following ways:

(a) The Sejpals' Pennsylvania Superior Court Civil Docketing Statement (See Exhibit 1) for this appeal was sent via first class mail to Thomas Halloran, Senior Deputy Attorney General at the Pennsylvania Office of the Attorney General. The letter establishing this is attached hereto as Exhibit 2.

(b) The Sejpals' Motion for Continuance of the Appeal (See Exhibit 3) was sent via first class mail to Thomas Halloran, Senior Deputy Attorney General at the Pennsylvania Office of the Attorney General. The letter establishing this is attached hereto as Exhibit 4.

(c) The Sejpals' Brief (See Exhibit 5) and Reproduced Record for this appeal was sent via first class mail to Thomas Halloran, Senior Deputy Attorney General at the Pennsylvania Office of the Attorney General. The letter

establishing this is attached hereto as Exhibit 6.

The Sejpals complied with the Proof of Service requirement of Pa. R.A.P. 521 (a) in the following ways:

(a) The Sejpals' Motion for Continuance of the Appeal had a Proof of Service attached to it which stated in part:

> "I, hereby certify that a true and correct copy of the above was mailed by U.S. First Class Mail, postage prepaid, on this 12th day of June, 1992, to the following:
>
> Thomas Halloran, Esquire
> Office of the Attorney General
> Manor Building
> 564 Forbes Avenue
> Pittsburgh, PA 15219."
> (See Exhibit 3).

The Sejpals' Brief and Reproduced Record for this appeal had a Proof of Service attached which stated in part:

> "I, hereby certify that a true and correct copy of the foregoing has been mailed by First Class Mail, postage prepaid, pursuant to PA. R.A.P., Rule 121, this 17 day of July, 1992, addressed as follows:
>
> Thomas Halloran, Esquire
> Office of the Attorney General
> Manor Building
> 564 Forbes Avenue
> Pittsburgh, PA 15219."
> (See Exhibit 5).

The Sejpals have given the Pennsylvania Office of the Attorney General written notice of their appeal and the constitutional issue contained within on three separate occasions, (See exhibits 1,2,3,4,5 and 6), and have filed Proofs of Service providing said Notice to the Pennsylvania Office of the Attorney General within this Court on two separate occasions (See Exhibits

3 and 5). Said Proofs of Service are of record with this Court and can be found attached to the Sejpals' Motion for Continuance of the Appeal and the Sejpals' Brief.

Based upon this Court's apparent failure to follow a rule of law and its misapprehending of the facts relative to the Sejpals' compliance with Pa. R.A.P. 521 (a), the Sejpals respectfully request that this Honorable Court grant reargument on the waiver of their constitutional challenge to Pa. C.S. 8305 (a) and (b).

The Sejpals have gone belt and suspenders above the requirements of Pa. R.A.P. 521 (a).

Respectfully Submitted,
BEHREND & ERNSBERGER

/s/_____
Kenneth W. Behrend
Attorney for Appellants

"Appendix A Omitted"

"Appendix B Omitted"

"Exhibit 1 Omitted"

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April 15, 1992

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Altoona, PA 16603

Thomas Halloran, Esq.
Office of the Attorney General
Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

Re: *Sejpal et.al. v Corson et. al.*
Superior Court Docket No 581PGH1992

Dear Gentlemen:

Enclosed please find a copy of the Superior Court of Pennsylvania Civil Docket Statement duly files on this day in the above captioned matter.

Very truly yours,
Behrend and Ernsberger
/s/_____
Kenneth W. Behrend

KWB/clh
Enclosure

"Exhibit 3 Omitted"

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AFFILIATED COUNSEL:
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WASHINGTON, D.C.
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June 12, 1992

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Thomas Halloran, Esquire
Office of the Attorney General
Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

Re: *Sejpal et.al. v Corson et. al.*
Superior Court Docket No 581PGH1992

Dear Gentlemen:

Enclosed please find a Motion For Continuance Of The Appeal that has been filed with the Superior Court of Pennsylvania today.

Very truly yours,

/s/_____
Kenneth W. Behrend

KWB:lmz

Exhibit 4
Page 10

"Exhibit 5 Omitted"

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AFFILIATED COUNSEL:
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WASHINGTON, D.C.
DANIEL W. CANNON

July 17, 1992

David Donaldson, Esquire
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1515 Market Street
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10 Sheraton Drive
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Frank J. Hartye, Esquire
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Holidaysburg, PA 16648

Thomas Halloran, Esquire
Office of the Attorney General
Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

Re: *Sejpal et.al. v Corson et. al.*
Superior Court Docket No 581PGH1992

Dear Gentlemen:

Enclosed please find a Brief and Reproduce Records that has been filed with the Superior Court of Pennsylvania today.

Very truly yours,

/s/_____
Kenneth W. Behrend

KWB:lmz
Enclosures

Exhibit 6
Page 12

PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing has been mailed by First Class Mail, postage prepaid, pursuant to PA.R.A.P., Rule 121, this 17 day of July, 1992, addressed as follows:

David Donaldson, Esquire
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1515 Market Street
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Manor Building
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Pittsburgh, PA 15219

/s/
Kenneth W. Behrend
Attorney for the Appellant

PROOF OF SERVICE

I, hereby certify that a true and correct copy of the foregoing has been mailed by First Class Mail, postage prepaid, pursuant to PA.R.A.P., Rule 521, this 9th day of February, 1993, addressed as follows:

David Donaldson, Esquire
Admin. Office of PA Courts
1515 Market Street
Philadelphia, PA 19102

Frank J. Stanek, Esquire
10 Sheraton Drive
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564 Forbes Avenue
Pittsburgh, PA 15219

/s/
Kenneth W. Behrend
Attorney for the Appellant

MSAFP TELEPHONE REPORT

Patient Name: Julie Sejpal Date of Specimen: 3/17/89
Referring Physician: DRM Report Date: 3/24/94

20 Weeks Gestation Based on __ Sonar √ LMP __ Exam

__ Singleton __ Twins __ Insulin Dependent Diabetes Mellitus __ Race

17 IU/ml 0.52 MoM

1/210 Population Risk for Down Syndrome 1/94 Adjusted Risk for Down Syndrome

Recommendations:

1. ☐ Levels of MSAFP undetectable. Level II Ultrasound is recommended for correct gestational dating. If patient is < 14 weeks a repeat specimen should be drawn and sent between 16 to 18 weeks. If patient is > 14 weeks option of amniocentesis should be discussed. Genetic counseling is available to discuss modified risks and further testing.

2. ☐ Less than or equal to 14 weeks. Redraw at 16 - 18 weeks.

3. ☐ Sample hemolyzed. Repeat specimen needed.

4. √ Adjusted risk for Down Syndrome greater than 1/270. Patient should be informed of the availability of sonar and amniocentesis. Genetic counseling is available to discuss modified risk and options for further testing.

5. ☐ Value > 3 MoM. Increased risk for abdominal wall defect or open neural tube defect. Patient should be informed of the availability of sonar and amniocentesis.

Genetic counseling is available to discuss modified risk and options for further testing.

6. ☐ Elevated value less than 3 MoM. Level II Ultrasound for multiple pregnancy, obvious defects and gestational dating. if dating is consistent and < 19 weeks a repeat should be drawn and sent 8 to 10 days after initial specimen ( ). If dating is inconsistent or patient > 19 weeks please contact us for modified report. The availability of amniocentesis should be discussed with the patient. Genetic counseling is available to discuss risk and options for further testing.

7. ☐ Family history of CNS closure defect. Patient's risk based on history _____. Women should be informed that MSAFP only rules out 90% of the cases of SBC and 90% of the cases of anencephaly. Genetic counseling is available to discuss risk and options for further testing.

8. ☐ Twin pregnancy $\geq$ 2.5 MoM. Level II Ultrasound to rule out obvious defects.

IN THE COURT OF COMMON PLEAS OF CAMBRIA
COUNTY, PA
CIVIL DIVISION
* * * * * * * *

JULIE SEJPAL and VINOD SEJPAL *
and ERICA LYNN SEJPAL, a minor, *
by JULIE SEJPAL, her guardian, *
*
Plaintiffs *
*
vs. *
*
CORSON, MITCHELL, TOMHAVE & *
MCKINLEY, M.D.S., INC.; HAMPTON *
CORSON, DONALD MITCHELL, ROBERT *
TOMHAVE, RICHARD G. MCKINLEY, *
DONALD R. MCKINLEY and CONEMAUGH*
VALLEY MEMORIAL HOSPITAL, *
*
Defendants. *

* * * * * * * * *

DEPOSITION OF
JULIE SEJPAL

Taken on behalf of the Defendants herein, Conemaugh Valley Memorial Hospital, pursuant to the Rules of Civil Procedure, taken before me the undersigned, Christine M. Lesiure, a Court Reporter and Commissioner of Deeds in and for the Commonwealth of Pennsylvania, at the Borough Building Meeting Room, 300 West High Street, Ebensburg, Pennsylvania, on Tuesday, March 8, 1994, at 10:55 a.m.

SARA ANN SARGENT
COURT REPORTING SERVICE
210 MAIN STREET
JOHNSTON, PA 15901
(814) 536-8908

APPEARANCES

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P.O. Box 533
Hollidaysburg, PA 16648
Counsel for Conemaugh Valley Memorial Hospital

. . .

[33]
[Julie Sejpal] A. Yes.
[Attorney Hartye] Q. And he called the results in?
A. Right.
Q. To Magee?
A. I knew he called them to somebody. I didn't know who at the time.
Q. And then you went back into his office?
A. Yes.
Q. And he talked with you at that time?
A. Yes.
Q. Tell me what you recall about your conversation with Doctor Donald McKinley on this date?
A. He said that I just wasn't as far along as what they thought. Everything was fine and they changed the due date. I asked him if the test should be repeated and he said, no, there's no need. Everything is fine. I may have asked that twice.
Q. Did he show you any documents or test results relating to your blood test?
A. Not that I recall.
Q. Did he discuss with you probabilities of Down Syndrome or anything of that nature?
A. No.
Q. Did he discuss with you your age in
[34]
relationship to the risk of Down Syndrome?
A. No.
Q. Was it your understanding that the Doctor was telling you that the tests showed that everything was fine?
A. Yes.
Q. And that it was not necessary to have any additional tests?
A. That's what I assumed.
Q. Did you ask him specifically whether or not he recommended additional -- not to have that one test redone, but whether he recommended additional testing?
A. No, because I was told that that was the first step. If there were no concerns there, it was my understanding there was no need for any additional tests.

Q. And you're saying that you don't recall any discussion concerning an amniocentesis that day?
A. There was no discussion of an amnio.
Q. Subsequent to that particular visit where you had the ultrasound done and you had this conversation with Doctor Donald McKinley, did you have any further conversations with any of the physicians in the office concerning your age and the
[35]
risk of having a Down Syndrome baby?
A. No, not that I recall.
Q. Just so I have it right, you recall there was a specific conversation with Doctor Tomhave concerning this in January 20 of '89; correct?
A. Concerning what?
Q. Concerning Down Syndrome and tests that could be done in order to ---?
A. It wasn't specifically Down Syndrome, just tests in general for women over the age of 35.
Q. And in what terms did you talk about it, if not specifically Down Syndrome?
A. I don't remember. All I remember is that there were three tests that could detect problems in pregnancies of women over age 35. That's what he told me.
Q. When you went into the office back in January 20th of '89 you indicated that during this conversation you brought up about amniocentesis; correct?
A. Right.
Q. And when you brought it up, you brought it up for what reason?
A. Because I was over the age of 35.
Q. And?
[36]
A. I thought I was supposed to have an amniocentesis.
Q. For what reason?
A. Because I'm over the age of 35 and there's an increased risk of problems.
Q. Of just problems?
A. Problems in general.
Q. So there was no discussion about congenital defects, it was

more just talking in general about problems with pregnancies over 35 years of age?

A. I can't recall the specific conversation but I know that there are increased risks to the mother as well as the baby over age 35.

Q. So you were not talking specific defects on that day, you were just talking problems?

A. Maybe he reeled off all of them, I don't know. I just know that there are more problems over that age. I thought an ultrasound was routine in women over 35 -- I mean an amniocentesis was routine.

Q. Do you recall any specific conversation with either of the two doctors, Doctor Tomhave or Doctor Donald McKinley, on the two days we've talked about where Down Syndrome was even mentioned?

A. Like I said, that first visit with Doctor

[37]

Tomhave, he may have went over all the different problems that could occur. You know, he might have mentioned it, but nobody ever specifically talked to me about Down Syndrome.

Q. And you can't remember for sure whether that's one of the things he mentioned?

A. I know with Donald McKinley at the ultrasound, no mention was ever made.

Q. But with Doctor Tomhave you're saying you can't recall one way or the other?

A. He may have gone over in general problems associated with an older mother but there was no specific talk about Down Syndrome, nothing that stands out in my mind.

Q. And you didn't bring it up?

A. I brought up amniocentesis.

Q. But you didn't bring up Down Syndrome?

A. No.

Q. I know we've covered it but let's go back for a moment. I asked you what your intentions were before as to if the baby was Down Syndrome on that day and you indicated that you would have --

A. Aborted.

Q. -- aborted. Maybe that wasn't a fair question. Were you thinking in terms of Down

. . .

[51]

[Julie Sejpal] A. I'm not sure exactly.

[Attorney Hartye] Q. Do you know how many scars you have now?

A. Not really.

Q. Are you saying as part of this lawsuit that you would not have consented to the tubal ligation had you known that the child was Downs?

A. Yes.

Q. And when did you come to that determination?

A. I don't know the exact moment but I know that if I had known she was Downs I would have aborted.

Q. I guess my question is this, are you saying that had the doctors told you in the Operating Room after the delivery of the baby the baby is Downs, do you want to go through with the tubal or not, are you saying that you would have told them, no, I don't want the tubal?

A. Right, I would have told them no.

Q. Why would you have told them no?

A. Because I would have a chance to have another pregnancy, a normal pregnancy.

Q. You would have your daughter and you would still think about having another child; is that what you're saying?

. . .

[118]

Syndrome?

[Julie Sejpal] A. No, I did not. I just asked him, should he repeat the test. And he asked me what test, and I said the alphafetal protein test. He looked over my records and he said, there's no need, everything is fine. You weren't as far along as what we thought. And then as he was leaving the room he said something about it being too late anyway.

[Attorney Behrend] Q. Did you ask him about that?

A. No, I did not.

Q. Were you able to ask him?

A. I suppose I could have stopped him and asked him. I just sat there thinking what does he mean it's too late.
Q. He was leaving the office?
A. He was walking out the door as he said it.
Q. Now, this R. McKinley, that's not D. McKinley?
A. No, that's Richard McKinley.
Q. Are they related?
A. I think they're brothers.
Q. And then again on August 8 you had another meeting with Doctor R. McKinley.
A. Right.
Q. And was that the time that you and he

. . .

[120]
[Attorney Behrend] Q. And then you had another discussion with Doctor R. McKinley on August 30th, 1989; did you not?
[Julie Sejpal] A. Yes.
Q. And was he the Doctor that did the tubal ligation?
A. Yes.
Q. Now, during the procedure -- how did that go first? Did they do the C-section and deliver the child?
A. Yes.
Q. And then they continued immediately into the tubal ligation or were you moved somewhere else? Explain to us.
A. Well, after the baby was born, they showed her to me and then --.
Q. Who is they?
A. The nurse. She was all wrapped up. And then, I don't know exactly what he has to do after the actual C-section but I assumed he was getting ready to do the tubal. And everybody seemed to be rushing around and he asked the nurse, is she okay. And the nurse --.
Q. Referring to what?
A. The baby, is the baby okay. And she said yeah, she's fine. She needs a little oxygen. And I

[121]

believe my husband left then after the baby was okay, supposedly okay. And then he asked again, is the baby okay, is she all right. And the nurse told him again, yeah, she's fine.

Q. And then he did the tubal ligation?

A. Yes.

Q. Was that done in the same room?

A. Yes, right in the same --.

Q. Were you still on the same table?

A. Yes, same table.

Q. And then the same R. McKinley when you thought you had infections, he came in to --?

A. I thought the sutures were infected.

ATTORNEY HARTYE:

I'm going to object. He didn't even ask a question and she's answering.

BY ATTORNEY BEHREND:

Q. With respect to Doctor R. McKinley after delivery, you had a conversation with him about whether your sutures were infected?

A. Yes, that's true.

Q. How did he come to have that conversation with you?

A. I had been home about two weeks and thought my sutures were infected. So I called and made an

. . .